

the cause was remanded for further proceedings by the Court of Appeals, and this proof, with all the proceedings, has been carefully considered, and the conclusion to which I have come is, that under all the circumstances of the case, the relation in which the parties stood at the period of the sale of the vessel, in August, 1850, did not preclude the defendant from becoming the purchaser of the vessel.

It is quite evident from the second letter of the defendant, under date the 15th of August, 1850, that it was written under high excitement, and there are expressions in it indicative of a determination to sell the vessel at once at any price. But in my opinion it is equally clear, from the proof now in the cause, that Messrs. Winter & Latimer, the parties who held the letter of attorney from the complainant to sell his interest in her, were quite as much if not more to blame (if blame be imputable to any one) than the defendant, for bringing her into market at the time and in the mode in which she was sold.

That they could have controlled the sale at that time is manifest, and though Latimer in his proof speaks of the time and mode selected as injudicious, there is no intimation anywhere that they communicated their opinion upon the subject to the defendant. When the defendant left the port of Baltimore, he held a power of attorney from the complainant to dispose of his interest in the vessel. After his departure, from some unexplained cause, the complainant chose to delegate this authority to Mr. Lippincott, who transferred the power to Winter & Latimer, and the evidence of Mr. Cannon, the auctioneer who made the sale, is explicit that it was made by order of that firm. There can certainly be no doubt that the defendant not only concurred in but pressed the sale on, but I am far from thinking that all the consequences resulting from disposing of the vessel at that time, and in the mode selected, should be visited upon him, when it is undeniable that the parties who held the letter of attorney of the complainant never intimated to him a doubt of the propriety of disposing of the property in that way, and at that time, but, on the contrary, gave the auctioneer orders to make it.